

1 MICHAEL N. FEUER, City Attorney (SBN 111529)
2 BEVERLY A. COOK, Assistant City Attorney (SBN 68312)
3 DANIEL M. WHITLEY, Deputy City Attorney (SBN 175146)
4 200 North Main Street, Room 920, City Hall East
5 Los Angeles, California 90012
Telephone: (213) 978-7786
Fax: (213) 978-7711
E-mail: Daniel.Whitley@lacity.org

6 Attorneys for Defendant *CITY OF LOS ANGELES*

7
8
9 Exempt from filing fee per
10 CA Gov. Code § 6103
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT

HILL RHF HOUSING PARTNERS, L.P.;) CASE NO.: BS170127
OLIVE RHF HOUSING PARTNER, L.P.,)
Petitioners/Plaintiffs,)
vs.)
CITY OF LOS ANGELES *et al*,)
Respondents/Defendants.)
Dept.: 86
Date: May 25, 2018
Time: 9:30 a.m.

///
///
///

TABLE OF CONTENTS

3	I.	FAILURE TO MEET AND CONFER.....	3
4	II.	THE CITY'S OBJECTIONS ARE WELL-FOUNDED AND NO FURTHER RESPONSES ARE REQUIRED.....	5
5			
6	A.	NOTHING JUSTIFIES MORE THAN 35 REQUESTS FOR ADMISSION IN THIS MATTER.....	5
7			
8	B.	THESE REQUESTS SERVE NO USEFUL PURPOSE IN MANDAMUS.....	7
9	III.	SPECIFIC REQUESTS.....	8
10			
11	A.	REQUESTS 57 TO 59.....	9
12			
13	B.	REQUESTS 60, 61, and 63.....	9
14			
15	C.	REQUESTS 65 and 72.....	10
16			
17	D.	REQUESTS 76, 78, and 82.....	11
18			
19	IV.	SANCTIONS.....	12
20			
21	V.	CONCLUSION.....	16

TABLE OF AUTHORITIES

CASES

<i>Fairfield v. Superior Court of Solano County</i> (1975) 14 Cal. 3d 768, 772	7
<i>Obregon v. Superior Court</i> (1998) 67 Cal. App. 4th 424, 430-432	3
<i>Town of Tiburon v. Bonander</i> (2009) 180 Cal. App. 4th 1057, 1076	7
<i>Townsend v. Superior Court</i> (1998) 61 Cal. App. 4th 1431, 1437	3
<i>Westchester Secondary Charter School v. Los Angeles Unified School Dist.</i> (2015) 237 Cal.App.4th 1226	8

STATUTES

California Code of Civil Procedure

Section 2016.040.....	3
Section 2033.050.....	6
Sections 2033.030 and 2033.050	6
Section 1094.5.....	7

1 Petitioners argue that although the City of Los Angeles (the “City”) admitted or denied
2 over 85% of their Requests for Admission, the City had no reason to deny 11 other Requests for
3 lack of sufficient information. Petitioners argue that the City has enough information to either
4 admit or deny those 11 Requests based solely on the Record, and so must. The City, on the other
5 hand, believes these Requests are completely improper, and in any event seek extra-record
6 information it does not yet have.

7 Petitioners are in a dilemma. Either these requests are entirely improper because they do
8 not seek extra-record information and so are prohibited in a mandamus action, or these requests
9 seek extra-record information the City does not yet have, in which case the City’s answers are
10 proper. These requests are objectionable regardless for being duplicative and unnecessary, but
11 Petitioners fail to address this basic conundrum. Either their requests are improper, or the City’s
12 responses are proper.

13 This continues Petitioners’ conduct during the meet and confer process. When the City
14 pointed out that these Requests sought nothing that could further this litigation, duplicated other
15 requests (often literally), and were completely unjustified in a mandamus case, Petitioners
16 refused to address these concerns in any but the broadest manner. Thus, Petitioners complained
17 of the responses to “Request Nos. 57-61, 63, 65, 72, 76, 78, & 82” as a block, with exactly the
18 same complaint for all: that the City could admit or deny the Requests without reservation.
19 Petitioners’ earlier failure to explain their position for these very different Requests made it
20 impossible for the parties to have any reasonable chance to resolve this without court
21 intervention. Indeed, while Petitioners argued that the City **must** answer these Requests for
22 Admissions solely from the Record, Petitioners at the same time argued that the City **could not**
23 cite solely to documents in the Record to justify its failure to admit these and similar Requests.
24 Petitioners thus created a paradox they refused to address.

25 Nevertheless, the City attempted to find ways to provide information that would satisfy
26 Petitioners, but was ignored. The City offered that it could amend most, if not all, of these
27 requests if Petitioners would stipulate to going forward solely on the Administrative Record.
28

1 This seemed to be a reasonable step. But other than asking the City to answer two completely
2 reworded requests, Petitioners ignored the City's concerns altogether.

3 Petitioners Motion to Compel should be denied solely for this failure to make a good
4 faith effort to meet and confer; however, the Motion also should be denied because Petitioners
5 are not entitled to any further response. These Requests seek discovery regarding a mandamus
6 action. In such matters discovery is allowed only to find the extremely limited evidence
7 admissible in such matters. But Petitioners admit that this discovery does not seek, let alone
8 have any reasonable chance to locate, such extrinsic evidence. Petitioners thus do not even
9 attempt to show that their Requests are reasonably directed towards the shallow pool of
10 discovery topics allowed here.

11 Going to the substance, the contentious responses refer to requests that either explicitly or
12 implicitly require extrinsic evidence. Because of this basic problem with their current position,
13 in their Motion to Compel Petitioners often reworded their Requests completely or ignored what
14 the Requests actually say. Petitioners could have cleared this up with a single sentence¹ but
15 never even tried, and now argue that the City could answer solely based on the record despite
16 their refusal to concede that no extrinsic evidence is admissible here.²

17 Likewise, Petitioners now argue that this discovery addresses the contents of documents
18 (contrary to their position during the meet and confer process). If the Requests do merely
19 address the contents of documents in the Record, the City's objections are well-founded; such
20 discovery cannot lead to any discoverable information. On the other hand, if the requests seek
21 information beyond the record, not only the City's objections but the responses themselves are
22 well-founded. Either way the Motion should be denied.

23

24

25 ¹ The City only served discovery because Petitioners' own requests indicated that they intended
26 to rely on evidence outside of the Administrative Record. The City otherwise would not have
27 seen much point to discovery in cases such as this. The City made it clear that the only response
it was seeking was (1) do Petitioners intend to use extrinsic evidence and if so (2) what is it?
(Declaration of Daniel M. Whitley at ¶ 11.)

28 ²As a side issue, the City believes the Court could find that Petitioners, in filing this Motion, have
taken the position that only the administrative record is at issue and so have waived the right to
introduce any extrinsic evidence at trial.

1 Finally, all of the requests at issue here are duplicative if they do not address extrinsic
2 evidence and therefore Petitioners are not entitled to exceed their allotted 35 Requests. Most of
3 them repeat other Requests verbatim or with minor and inconsequential changes. Petitioners
4 have no justification to even propound them, let alone seek to compel responses. But to the
5 extent these Requests do address “new” material, they must go beyond the Record. Thus, the
6 Court should find that the Requests cannot be answered solely with information from the Record,
7 as these requests otherwise exceed the allotted 35 for no reason, and deny the Motion.

8 For these reasons the Motion to Compel should be denied and sanctions should be
9 imposed.

10 **I. FAILURE TO MEET AND CONFER.**

11 Petitioners failed to make a reasonable attempt to meet and confer on these Requests.
12 Under Code of Civil Proc. § 2016.040, a party must show “a reasonable and good faith attempt at
13 an informal resolution of each issue presented by the motion.” “A reasonable and good faith
14 attempt at informal resolution entails something more than bickering with deponent’s counsel at a
15 deposition. Rather, the law requires that counsel attempt to talk the matter over, compare their
16 views, consult, and deliberate.” (*Townsend v. Superior Court* (1998) 61 Cal. App. 4th 1431,
17 1437.) As part of these reasonable and good faith attempts, parties must consider alternative
18 methods to resolve discovery disputes and consider the suggestions made by their opponents.
19 (*See Obregon v. Superior Court* (1998) 67 Cal. App. 4th 424, 430-432.)

20 Far from meeting this burden, Petitioners evince exactly the conduct rejected by
21 *Townsend* and *Obregon*. Petitioners failed to even explain most of their concerns, let alone
22 attempt to resolve them. Petitioners utterly ignored the City’s attempts to find common ground.
23 Other than repeatedly telling the City it was wrong, Petitioners made no real effort to resolve
24 these issues.

25 Thus, Petitioners sent the City a letter vaguely referring to Requests 57-61, 63, 65, 72, 76,
26 78, and 82, addressing them all as a single “Request,” and specifically addressing only Request
27 72. (*See Exhibit G to Petitioners’ Motion to Compel, Page 4-5.*) These Requests were all
28 substantially different from each other (albeit very similar to other Requests the City admitted or

1 denied). Some explicitly referred to documents in the Administrative Record (i.e., Request 72),
2 while others did not (i.e., Request 60). Some explicitly refer to facts that do not appear in the
3 Record (i.e., Request 57), while others do not. Thus, although all 11 appear to require extrinsic
4 evidence, the reasons for requiring this evidence, and the extent it was needed, are different. It
5 might not have been required at all for some (had Petitioners explained exactly what they
6 sought), and had Petitioners addressed them separately this could have been ironed out. Despite
7 these differences, Petitioners treated them all the same, as raising the same issues and the same
8 concerns.

9 Nor did Petitioners join the City in looking for ways to resolve these disputes. The City
10 offered to amend its responses if Petitioners would agree to rely only on the Administrative
11 Record. This seemed very reasonable, given the extremely limited extrinsic evidence Petitioners
12 could possibly provide and the complete absence of any indication such extrinsic evidence
13 existed. But Petitioners rejected this out of hand and provided no proposals of their own. Nor
14 did Petitioners attempt to limit discovery in response to the City's objections to the number and
15 breadth of Requests at issue. Moreover, with the exception of Requests 57-59, in which
16 Petitioners simply abandoned their actual Requests and asked the City to address matters already
17 addressed by other Requests, Petitioners made no attempt to compromise.³

18 Furthermore, while quibbling with the City's Responses here Petitioners also objected to
19 the City's Interrogatory Responses based on these Requests. There, however, Petitioners
20 objected that the City **cannot** rely on the Report and other documents in the Record to support its
21 Responses. Instead, Petitioners demanded "facts" beyond merely citing to the documents as
22 allowed by normal discovery rules. Thus, during the Meet and Confer process Petitioners
23 explicitly took the position that the City **could not** rely on the very same documents Petitioners
24 now argue allows the City to respond.

25 _____
26 ³ This was clearly a bad-faith offer, as then these requests as reworded are virtually identical to
27 other Requests made by Petitioners (such as Request 52.) If Petitioners had met and conferred in
28 good faith, this would have been a perfect opportunity to concede the City's responded to this
topic already and move on to other areas. Petitioners, however, were more interested in making
quick "argument" points than addressing these matters in a meaningful way.

1 This is unreasonable. Even if Petitioners were correct on every point (which they were
2 not), Petitioners had a duty to attempt to resolve this dispute through compromise and
3 negotiation. At the very least, if Petitioners believed the Record itself required the City to
4 respond to these Requests without further investigation, Petitioners should have dropped their
5 demands that the City provide “facts” beyond citing to documents to support its response. But
6 Petitioners did nothing but repeat its demands, focusing on debate points and legal arguments.
7 Petitioners burdened the City and now the Court with a pointless discovery dispute. The Court
8 should not reward this conduct. The Motion to Compel should be denied.

9 **II. THE CITY’S OBJECTIONS ARE WELL-FOUNDED AND NO FURTHER
10 RESPONSES ARE REQUIRED.**

11 Petitioners appear to largely miss the point of the City’s objections. The City contends
12 that Petitioner’s Requests for Admission largely (if not solely) address the contents of
13 documents, are repetitive and duplicative, and address marginal and immaterial aspects of those
14 documents. In the context of a mandamus action, with evidence and issues largely (probably
15 completely, here) limited to the Administrative Record, such discovery is rarely allowed and
16 should be circumspect.

17 Petitioners show little interest in addressing these concerns. Even in this Motion to
18 Compel, Petitioners rely on generalities, such as that discovery is “broad” and is “allowed” in
19 Writs. Perhaps so! But Petitioners make no showing that these requests are likely to lead to
20 discoverable information or are that this matter justifies 82 repetitive requests. Petitioners do not
21 appear to make any argument at all that these Requests further the course of this litigation. The
22 City’s objections are well-founded and should be sustained.

23 **A. NOTHING JUSTIFIES MORE THAN 35 REQUESTS FOR
24 ADMISSION IN THIS MATTER.**

25 Petitioners fail to provide any reason why the Court should allow more than 35 Requests
26 for Admission. The Code allows only 35 Requests for Admission unless a party can show that
27 the complexity or quantity of issues requires additional Requests. (See Code of Civil Procedure
28 §§ 2033.030 and 2033.050.) In the declaration in support of additional Requests, the requestor

1 must provide "the reasons why the complexity or the quantity of issues in the instant lawsuit
2 warrant this number of requests for admission." (Code of Civil Procedure § 2033.050.)

3 In support of their Requests, Petitioners declared that they needed more than 35 Requests
4 "because of the complexity of the law governing business improvement districts and the quantity
5 of issues in the instant lawsuit against the City of Los Angeles." (Declaration for Additional
6 Discovery, attached to Form Requests for Admission, Exhibit A to Motion to Compel.) This
7 says almost nothing. Substitute "this run of the mill contract claim" or "this run of the mill
8 personal injury action" for "business improvement districts," and it would theoretically justify
9 any number of responses in virtually any lawsuit. The Declaration thus fails to provide any
10 reasons why this matter is "complex" or raises a "quantity of issues," let alone any reason why
11 more than 35 Requests are needed. Nor do Petitioners provide any justification in their Motion.
12 They ignore this fundamental issue altogether. Therefore, Petitioners fail to satisfy the Code and
13 are not entitled to responses to more than the first 35 Requests under any circumstances.

14 But worse, the requests at issue here all repeat other requests (or the Verified Complaint)
15 virtually verbatim. They duplicate not just the substance, but the specific language. The
16 "complexity" or "quantity" of issues can never justify duplicative requests. Petitioners are not
17 entitled to propound the Requests they seek, nor to force the City to answer.

18 Moreover, these requests ask the City to admit to direct quotations or paraphrases from
19 documents. The document either contains that language or it does not, and admissions regarding
20 such document contents shed little light on the matter. Petitioners fail to even argue that these 82
21 Requests "clarify" any material issue or "narrow" any material dispute. Even if such requests
22 have some slight tendency to help clarify the issues or narrow matters for trial, such a purpose
23 does not show a "complexity" that warrants exceeding the 35 requests allowed by the Code.
24 Therefore, Petitioners' declaration could not be well-founded, as under no circumstances could
25 they declare that all 82 Requests were necessary.

26 The City, in an attempt to find common ground and avoid needless judicial review,
27 admitted or denied over 85% of these excessive Requests. Petitioners already received more
28 Responses than the 35 they are entitled to. There is nothing for the Court to compel here.

1 B. THESE REQUESTS SERVE NO USEFUL PURPOSE IN MANDAMUS.

2 Although as Petitioners rightly note discovery is “allowed” in mandamus, Petitioners
3 continue their pattern of focusing in irrelevant general statements and ignore that such discovery
4 is rarely relevant and severely restrained. The parties litigating the substance of a BID are
5 limited to the Administrative Record and such “extra-record evidence [that was] improperly
6 excluded by the public agency or could not have been produced through the exercise of
7 reasonable diligence at the time of the hearing.” (*Town of Tiburon v. Bonander* (2009) 180 Cal.
8 App. 4th 1057, 1076). Thus, the general restrictions on discovery in Writ matters apply and for
9 the same reasons.

10 And these restrictions are significant. As stated in *Fairfield v. Superior Court of Solano*
11 *County* (1975) 14 Cal. 3d 768, 772:

12 [Emphasis added; addressing a Writ of Mandamus under Code of Civil Procedure 1094.5].
13 [E]vidence additional to the administrative record can be introduced
14 only if that evidence could not with reasonable diligence have been
15 presented at the administrative hearing, or was improperly excluded
16 at that hearing. **This limitation on the admission of post-**
17 **administrative evidence works a corresponding limitation on**
18 **post-administrative discovery, restricting inquiries to those**
19 **reasonably calculated to lead to the discovery of additional**
20 **evidence admissible under the terms of section 1094.5.**

21 (*Emphasis added; addressing a Writ of Mandamus under Code of Civil Procedure 1094.5*).
22 More specifically, “posthearing discovery may reasonably be limited to inquiries calculated to
23 yield evidence which through no fault of the offeror does not appear in the administrative
24 record.” (*Fairfield*, at FN 6.) Like all discovery rules, *Fairfield* does not provide an absolute
25 bar to other discovery, but at a minimum such discovery must be limited and for an extremely
26 good reason.

27 Petitioners make no showing that extrinsic evidence is at issue (although they refuse to
28 concede that no such evidence can be introduced) and provide no other reason discovery should
29 proceed and so cannot seek any discovery. Petitioners apparently searched for any cases even
30 referring to discovery such as they seek and found one (*Westchester Secondary Charter School*
31 *v. Los Angeles Unified School Dist.* (2015) 237 Cal.App.4th 1226). Notably, *Westchester* does
32 not address under what circumstances such discovery is allowed, **nor does Westchester** in any

way challenge *Fairfield*. Under *Fairfield* requests for Admission would be allowed to address such extrinsic evidence and presumably *Westchester* followed *Fairfield* and limited such discovery to extra-record matters. But Petitioners fail to even argue they seek such information, let alone that the Requests have any reasonable chance of locating any.

Petitioners treat this as any other case, where “broad” discovery is the general rule. They are wrong. In mandamus the general rule is that discovery is limited to locating admissible extra-record evidence. Petitioners show no reason to go beyond that general rule. Petitioners’ requests are improper and no further responses should be ordered. Petitioners’ Requests do not seek any discoverable information, the City’s objections are well-founded and Petitioners’ Motion should be denied.

III. SPECIFIC REQUESTS.

Although the City's objections seem well-founded, the City in good faith provided responses to Petitioners' Requests. The City was able to answer the vast majority of these requests. For a handful, the City determined that it needed either more information, or more analysis, before it could admit or deny the Requests. (The City does not concede that it has any obligation to answer these requests, as there is no indication that any admissible extrinsic evidence exists. Nevertheless, the City was willing to try to find some common ground with Petitioners.)

Such a disagreement over evidence fails to show any basis for compelling further responses. Many of the Requests explicitly seek extrinsic evidence which the City does not yet have or conclusions the City has not yet made, which is a commonplace and reasonable justification for such responses. Many others either implicitly seek such evidence, or are simply irrelevant if they do not. The City clearly acted in good faith here, answering more than 70 requests and demurring to a handful that it believed needed further development. The City answered these Requests in good faith, and Petitioners have ample information with which to proceed to trial. Nothing further is required.

A. REQUESTS 57 TO 59.

Petitioners mislead the Court here. Petitioners argue that these requests ask the City to admit that their properties were not analyzed in the Engineer’s Report any differently from other commercial properties. (Motion at p. 8.) That’s not a fair reading of the Requests. Request 57, for instance, asks the City to “[a]dmit that Angelus Plaza and Angelus Plaza North, **which provide low-income housing to seniors and do not lease space at market value**, are not analyzed in the Engineer’s Report any differently from other commercial properties (*emphasis added*).” These requests explicitly ask the City to admit facts that are outside of the Report, with no showing that any such facts are relevant (or admissible).

The City pointed this out, and in response Petitioners asked the City to answer entirely different Requests, eliminating the references to low-income housing. But those new Requests duplicate other Requests. Request 57 would now read, “[a]dmit that Angelus Plaza and Angelus Plaza North are not analyzed in the Engineer’s Report any differently from other commercial properties.” That is amply covered by Request 52 (“Admit that aside from Assessable Square Footage, the Engineer’s Report does not consider other characteristics that are unique to an assessed parcel in calculating DCBID assessments.”) and Request 53 (“Admit that the Engineer’s Report does not analyze the particular usage of a parcel (e.g., residential use versus retail use) in calculating assessment amounts.””).

Petitioners complain of a problem that was built into their Request. The City's response is not the problem; Petitioners apparently did not ask for the information they now seek. And the information they now claim to seek was provided in response to other Requests, which specifically addressed these issues without appearing to bring in extrinsic evidence.

B. REQUESTS 60, 61, and 63.

Petitioners also mislead the Court as to these requests. Request 60, for instance, asks the City to admit “that DCB1D’s services are intended to provide a benefit to assessed parcels in the form of increased commercial activity and lease rates, among other varying economic benefits.” Petitioners argue that “a review of the Engineer’s Report is sufficient to allow the City to admit

1 or deny the matter in these requests,” but the requests themselves do not reference the Engineer’s
2 Report at all.

3 Petitioners ask the City to respond to requests that they did not make -at least here;
4 Petitioners made virtually identical requests earlier. The City denied the virtually identical
5 Request 45, for example, which asked the City to admit “that the services described by the
6 Engineer’s Report are intended to provide economic benefits to assessed parcels in the form of
7 increased commercial activity, which includes, but is not limited to, increased lease rates, an
8 enhanced business climate, improved business offerings, and attracting new residents,
9 businesses, and District investment.” Except for the explicit reference to the Request this
10 appears identical to Request 60.

11 Thus, if Request 60 has any relevance at all it must differ somehow from Request 45, and
12 the only possible difference is that it deletes any reference to the Report. The Request thus
13 appears to require knowing what the various stakeholders, and the DCBID itself, intended for
14 these services. The City has not yet completed this investigation, one that appears entirely
15 unnecessary as it does not seem likely to lead to admissible evidence (one basis of the City’s
16 objections here).

17 **C. REQUESTS 65 and 72.**

18 Here we arrive at Requests in which Petitioners at last seek to compel answers to the
19 Requests they actually asked, rather than Requests they could have asked but did not. However,
20 Petitioners fail to acknowledge that what they ask cannot clearly be answered and the City is still
21 considering the issue. None of this seems unreasonable; for the vast majority of these Requests,
22 the City believes it can admit or deny; for others it is still considering the issue.

23 Request 65, for example, asks whether the Report “relies” on the Streets and Highways
24 Code. The Report admittedly **refers** to the Streets and Highways Code. But the Report reflects
25 the Engineer’s conclusions and does not “rely” on anything except the Engineer’s experience,
26 expertise, and investigations. The Engineer’s expertise may include knowing and applying
27 various authorities, but it is not clear at all that he relied on every authority set forth in the
28 Report.

1 If this is relevant the City needs to finish reviewing the matter with witnesses and decide
2 on what authorities the Engineer actually “relied.” In short, the City is still considering whether
3 the Report “relies” on the Streets and Highways Code, including whether it must seek extrinsic
4 evidence to answer this. Request 72 is similar, confusingly mixing direct quotes, facts, and
5 conclusions. Had Petitioners bothered to address these requests separately during the meet and
6 confer process, perhaps the parties could have found some way to address the core issues. But
7 Petitioners made such efforts impossible.

8 Moreover, the City’s objections here seem particularly well-founded. Whether the
9 Report “relied” on any particular authority or contains specific language about residential
10 property is stunningly irrelevant. The Report is no less constitutional regardless of what
11 authorities it cites, or if it cites nothing at all.

12 **D. REQUESTS 76, 78, and 82.**

13 Here again we are left with Petitioners seeking responses to requests they could have, but
14 did not, make. For example, Request 76 asks the City to “[a]dmit that the Engineer’s Report
15 concludes that there are only 13 parcels outside of the DCBID which receive a general benefit
16 from DCBID’s services.” Petitioners now argue the City could admit or deny this based on
17 completely different language, that “[t]here are 13 parcels that are immediately adjacent to the
18 Downtown Center PBID and not within another PBID boundary.” That is a far less complicated
19 matter than the Request itself.

20 The City is unsure about this more complicated proposition. It requires a conclusion
21 tying together several other aspects of both the Report and other documents (notably the District
22 Plan). The Report states that there may be a “spillover” effect from the DCBID’s services to
23 nearby properties. The Report only specifically calculates a specific general benefit for thirteen
24 parcels, but that is a different determination than whether those are the only parcels that receive a
25 general benefit. It is possible that the engineer determined that for most such properties the
26 general benefit was either too small to calculate or there was no reliable method to calculate it,
27 and the general benefit was subsumed in the calculation for the other 13 properties. Indeed, the
28

1 City would be shocked if Petitioners do not intend to argue just that, i.e., that more than 13 such
2 properties received general benefits from the DCBID.

3 The City is still considering the matter, and may agree with the Request in the end;
4 however, as of this time the City cannot admit or deny these Requests, and it certainly could not
5 at the time the Responses were made. Nor is the City certain that these Requests can be
6 answered solely from the Record should extrinsic evidence be allowed, and that investigation is
7 not complete. Had Petitioners bothered to address these requests separately during the meet and
8 confer process, perhaps the parties could have found some way to address the core issues. But
9 Petitioners failure to do so made such efforts impossible.

10 In any event, if the requests can (as Petitioners argue) be answered solely from the
11 Record, these requests add nothing to this litigation and other requests addressing the same
12 topics. If Petitioners truly believed the Record was sufficient, they should have so stipulated and
13 not taken the contradictory position that the Record does not justify a response. It is too late
14 now, after failing to meet and confer on these issues, for Petitioners to seek to force the City to
15 respond otherwise.

16 **IV. SANCTIONS.**

17 Petitioners' course of conduct justifies sanctions. The City admitted or denied over 70
18 pointless Requests for Admission, but denied less than a dozen for lack of sufficient information.
19 That was not enough for Petitioners, despite most of those few contentious Requests addressing
20 topics already well-covered by other Requests.

21 And so Petitioners persisted. But they persisted by refusing to engage in any meaningful
22 discussion of the Requests still at issue. Petitioners made no attempt to limit duplicative requests
23 or the scope of discovery in this mandamus action. Nor did Petitioners make any attempt to
24 compromise, except for addressing two Requests in bad faith. This failure to engage during the
25 Meet and Confer process led directly to this filing, and this failure should be sanctioned.

26 Most importantly, Petitioners refused to account for this being a mandamus action
27 challenging the creation of a BID. Although discovery is allowed (if extremely limited) in such
28 a mandamus action, Petitioners never offered to adjust the scope or breadth of their discovery or

1 the answers they would accept given the circumspect discovery possible here. Egregiously,
2 Petitioners refused to even consider the extent to which these requests were duplicative and
3 therefore pointless. Petitioners never even acknowledged that many of these Requests were
4 copied from their Verified Complaint, and therefore completely unnecessary. Petitioners simply
5 ignored that they proceed in mandamus.

6 When the City pointed out that this discovery was excessive given this context,
7 Petitioners merely relied on broad statements regarding the “admissibility” of extrinsic evidence,
8 that discovery is “allowed” in mandamus matters, and that discovery is “broad.” All true in
9 general, but not all true for this specific case. Petitioners made no attempt at all to reign in their
10 dozens of repetitive discovery requests or focus on the issues they seek to address. Instead, they
11 mechanically insisted that they were entitled to answers “as required by the code,” without
12 making any attempt to recognize that those “requirements” are vague and easily disputable.
13 Petitioners ignored completely our basic obligation to find reasonable solutions to such disputes,
14 not merely argue about them.

15 Moreover, Petitioners never expressed why they believed any purportedly missing
16 information was relevant, useful, or not provided elsewhere in their voluminous discovery
17 requests. If they had, perhaps the City could have convinced them otherwise or provided
18 whatever minuscule information was missing. But Petitioners made no such efforts, thwarting
19 any attempt to resolve this informally.

20 For example, Petitioners now express concern that the City’s response to Requests 57-
21 59 leaves them in the dark regarding whether “assessable square footage is sufficient” with
22 respect to calculating the special benefits provided by the BID was well addressed. (Motion
23 at p. 8.) Likewise, Petitioners complain that because of this Response they do not know
24 whether “the assessment method is limited to measuring Assessable Square Footage.” But
25 Petitioners are well aware of the City’s contentions here, as the City answered Requests 51-
26 57. If those responses do not address Petitioners’ purported concern (the Requests were
27 denied), the City does not see how would any further response to Request 57 (asking the same
28 information with some added assumptions).

1 For the other Requests, Petitioners never bother to offer any explanation as to what the
2 Requests could possibly gain. And for good reason! Most merely quote parts of the Record, or
3 restate it in virtually identical terms. Petitioners argue that Request 72 addresses whether the
4 Management District Plan contains language pertaining to the “Treatment of Residential
5 Housing.” But why? The Plan either contains such language, or it does not. This Request adds
6 nothing to the litigation. Moreover, simply “containing” such language seems utterly irrelevant.
7 The issue is the treatment by the DCBID itself, which requires looking at the Record and the law
8 as a whole, not taking quotes from one document out of context.

9 When the City asked why this Request was relevant or useful, Petitioners said nothing
10 other than that discovery was “broad” and they can learn their opponents’ contentions. They
11 never engaged in any meaningful discussion of how this could possibly help advance the
12 litigation or was a material “contention.” This, again, seems like an area that a party acting in
13 good faith would concede, given the proper responses to dozens of other virtually identical
14 requests. Petitioners, however, were more interested in scoring debate points than resolving a
15 discovery dispute.

16 Petitioners’ bad faith is further shown by their internally inconsistent and illogical
17 positions. Petitioners argue that they are entitled to discovery because they are entitled to
18 introduce extrinsic evidence in a mandamus action. (Motion at p. 6.) But at the same time
19 Petitioners argue that extrinsic evidence is not even at issue, as the City must only do “a review
20 of the Engineer’s Report” to answer these Requests. (See, e.g., Motion at p. 8.) This at least
21 obscures Petitioners’ actual position. Do they seek extrinsic evidence, as allowed by *Fairfield*,
22 or not? But it certainly makes their refusal to stipulate that extrinsic evidence will not be used at
23 trial utterly confounding, given that they appear to be conceding it here in their Motion.

24 ///

25 ///

26

27

28

1 Moreover, Petitioners have changed their position dramatically during the meet and
2 confer process.⁴ Earlier, they sought repeatedly to obtain “facts” beyond the Record to support
3 the City’s Responses. When arguing about Interrogatory responses, Petitioners demanded that
4 the City “supplement the City’s responses to Form Interrogatory No. 17.1 to contain facts and/or
5 documents in support of the City’s denials, as the documents set forth in Attachment 1 [i.e., the
6 Report and other documents from the Record] to RHF’s Requests for Admissions do not
7 suffice.” (Exhibit G, March 6 letter, p. 4.) Otherwise, Petitioners said only, “[p]lease also note
8 that it is RHF’s position that the City’s reference to the [those documents] is insufficient as a
9 discovery response because the documents on their own do not support the City’s contentions
10 [i.e., denials of requested admissions].” (See *Id.*) To emphasize, during the Meet and Confer
11 process Petitioners took the position that the City **could not respond to these Requests simply**
12 **by referring to the Engineer’s Report.**

13 During telephone discussion the City desperately tried to discern Petitioners’ position
14 here. The City repeatedly pointed out that it was only relying on the record where it could, and
15 could not admit or deny where it thought extra-record evidence would be needed. Petitioners
16 refused to acknowledge that any of its Requests could possibly invoke extra-record evidence, but
17 at the same time refused to concede that the City could rely on the Record to justify its
18 responses. And Petitioners made no effort to address the City’s concern that Petitioners were
19 now arguing for “broad” discovery in mandamus, seeking discovery explicitly or implicitly
20 addressing only the Record, and then refusing to let the City justify its responses by citing to that
21 same Record.

22 To the contrary, Petitioners simply told the City that it must provide responses as
23 “required by the Code.” The City repeatedly asked what that would be, if not what the City
24 already provided, and was given the same stock phrase. Any reasonable view of the
25

26
27 ⁴Petitioners refused to break down their concerns regarding different Requests, which made it
28 impossible for Petitioners to explain how some requests required going beyond the record while
others did not. Instead, they took the blanket position that the City could not rely solely on the
Record to respond. Now they have changed their tune.

1 correspondence here can only be left with the impression that the City desperately tried to find
2 some way to meet Petitioner's concerns, however unfounded, but was met with nothing at all.

3 In short, if the City could have relied solely on the Record to answer Requested
4 Admissions, then Petitioners should not have believed that any "facts and/or documents" beyond
5 the Record were relevant. Thus, Petitioners took exactly the opposite position they now take
6 here. Taking entirely contradictory positions both during the Meet and Confer process and here,
7 in a subsequent Motion to Compel, reeks of bad faith and should be sanctioned.

8 **V. CONCLUSION.**

9 The City's objections here are well-founded, and the City has no obligation to provide
10 any responses to these requested admissions. Therefore, it cannot be compelled to submit further
11 responses. Moreover, although the City was not obliged to respond, the City provided perfectly
12 sound responses. The City has a sound basis for doubt here and has not finished investigating
13 and considering these propositions. There is no reason for the City to deny some requests, but
14 deny these closely related request for lack of sufficient information, unless the City believed that
15 was proper.

16 But Petitioners did not participate in the meet and confer process in good faith.
17 Petitioners never addressed these specific requests, and only now when filing their motion to
18 compel do Petitioners even acknowledge that these requests address different topics and raise
19 different issues. Petitioners made no effort to find common ground or otherwise avoid judicial
20 intervention.

21 ///

22 ///

23 ///

24

25

26

27

28

The Motion should be denied. Moreover, Petitioners did not act in good faith. The City has provided its attorney's fees and costs in the Declaration of Daniel M. Whitley, attached hereto, and is entitled to their award.

Dated: May 11, 2018 Respectfully submitted,

MICHAEL N. FEUER, City Attorney (SBN 111529)
BEVERLY A. COOK, Assistant City Attorney (SBN 68312)
DANIEL M. WHITLEY, Deputy City Attorney (SBN 175146)

By

DANIEL M. WHITLEY

Attorneys for the City of Los Angeles

m:\econ dev_pub finance\public finance\dan whitley\dc bid\opposition to motion to compel.doc

PROOF OF SERVICE

I, Cynthia Marchena, declare as follows: I am employed in the County of Los Angeles, California. I am over the age of 18 and not a party to the within action. My business address is 200 N. Main St., Rm. 920 C.H.E., and Los Angeles, California 90012.

On May 11, 2018, I served the foregoing document described as: **RESPONDENT CITY OF LOS ANGELES'S OPPOSITION TO MOTION TO COMPEL FURTHER RESPONSES TO RHF'S REQUESTS FOR ADMISSION**, on the interested parties in this action by placing a [X] true copy [] original copy thereof enclosed in a sealed envelope addressed as follows:

8 Timothy D. Reuben, Esq.
9 REUBEN RAUCHER & BLUM
10 12400 Wilshire Blvd., Ste. 800
Los Angeles, CA 90025

11 Michael G. Colantuono, Esq.
12 Holly O. Whatley, Esq.
13 Pamela K. Graham, Esq.
14 Colantuono, Highsmith & Whatley, PC
790 East Colorado Blvd., Ste. 850
Pasadena, CA 91101

[X] **MAIL** - I caused such envelope to be deposited in the United States mail at Los Angeles, California, with first class postage thereon fully prepaid. I am readily familiar with the business practice for collection and processing of correspondence for mailing. Under that practice, it is deposited with the United States Postal Service on that same day, at Los Angeles, California, in the ordinary course of business. I caused such envelope to be deposited in the mail at Los Angeles, California, with first class postage thereon fully prepaid.

20 [] Federal - I declare that I am employed in the office of a member of the bar of this court
at whose direction the service was made.

[x] State - I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 11, 2018, at Los Angeles, California.

California.
Cynthia Marchena
Cynthia Marchena